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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,711	11/12/2003	Guillaume Cassin	LOREAL 3.0-046; OA02360/E	9477
530 7590 11/27/2007 LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			EXAMINER FUBARA, BLESSING M	
			ART UNIT 1618	PAPER NUMBER
			MAIL DATE 11/27/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/706,711

**Applicant(s)**

CASSIN, GUILLAUME

**Examiner**

Blessing M. Fubara

**Art Unit**

1618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) 3-5 and 14-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,6-13 and 23-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Examiner acknowledges receipt of response to election requirement filed 5/10/07 and 8/27/07. Claim 10 is amended. Claims 1-46 are pending.

#### ***Election/Restrictions***

1. Applicant's election with traverse of claims 1, 2, 4-13 and 23-46 in the reply filed on 8/27/07 and 5/10/07 is acknowledged. The traversal is on the ground(s) that the members of the Markush group, though directed to independent and distinct inventions, share common utility and the examination of the members of the Markush group would not place serious burden on the examiner. This is not found persuasive because examination of all the members of the Markush group that are individually found in different claims places serious burden on the examination process.

The requirement is still deemed proper and is therefore made FINAL.

Applicant elected interpenetrating polymer (IPN) comprising polyurethane polymer and polyacrylic acid polymer and copolymer of acrylic acid and alkyl acrylate ester of formula III. It is thus brought to applicant's attention that claims 4 and 5 refer to non-elected grafted silicone polymer and claims 4 and 5 are thus not examined at this time. Therefore, claims 1, 2, 6-13 and 23-46 are examined and claims 3-5 and 14-22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 5/10/07.

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

Art Unit: 1618

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 6 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claim 6 recites the limitation "said synthetic polymer" in line 2. There is insufficient antecedent basis for this limitation in the claim. Claims 2 and 1 do not use the terms "synthetic polymer" so that the use of "said synthetic polymer" does not have antecedence from claim 2.
5. Claims 8-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 8 is directed to amphiphilic polymer that is selected from acrylic polymers, ...copolyesters. The acrylic polymer is further defined by claims 9 and 10. But, claim 1 requires that the amphiphilic polymer be ionic. It is unclear how the polymer of claims 8-10 are ionic when the requirement is for the amphiphilic polymer to be ionic.

Clarification is respectfully requested.

The boundaries of AMPS derivatives in claim 8 is not defined.

In claim 6, the synthetic polymer is selected from interpenetrating polymer networks and it is unclear how selection can be done from one compound.

6. Therefore, claims 8-13 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent

Art Unit: 1618

form, or rewrite the claim(s) in independent form. The amphiphilic polymers of claims 8-13 do not further limit “ionic amphiphilic polymer” of claim 1.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 2, 6, 8, 9, 13 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Dubief et al. (US 6, 090,376).

Dubief discloses composition comprising at least one grafted silicone polymer in particle form dispersed in aqueous medium, amphiphilic polymer (abstract; column 1, lines 32-43; column 2, lines 21-27; column 5, lines 28-30; column 7, lines 5-7), water (column 6, line 64), vegetable, animal or synthetic oils or vitamins or surfactants (column 7, lines 8-13). The composition comprising the amphiphilic polymer, the grafted silicone polymer meeting the limitation of tensioning polymer of claim 6, water and oil meets claims 1, 2 and 33. The amphiphilic polymer is used in amounts of between 0.01 to 20 wt% (column 6, lines 59-62) and the amphiphilic polymer can be based on acrylic polymers (column 5, line 60 to column 6, line 56) with the acrylic polymers meeting claim 8-13. Exhibiting “a retraction of isolated stratum corneum ... in water is a property/characteristic of the tensioning polymer and the tensioning polymer of Dubief would have the same property/characteristic.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1, 2, 6-13 and 23-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dubief et al. (US 6, 090,376).

Dubief anticipates claims 1, 2, 6, 8-10, 13 and 33 as described above. Dubief also suggests the incorporation of surfactant as an additive in amounts of 0-20% (column 7, lines 11-18). Claims 11, 12 and 23-32 recite the amounts of the acrylic polymer/ionic amphiphilic polymer, tensioning polymer, fatty phase, surfactant and water. Dubief does not teach the exact amounts recited in those claims. The amount of the ionic amphiphilic polymer of Dubief encompasses the claimed amount of the ionic amphiphilic polymer or acrylic polymer. The amount of the additive in Dubief encompasses the recited amount of say the surfactant. In the absence of unexpected results, the amounts recited in those claims are not inventive over the teaching of Dubief. While these amounts are not exactly the same as those recited in the claims, the amounts recited in the claims would have been obvious because the person of ordinary skill in the art would have good reason to use various components of the composition in amounts that would provide composition that when applied to hair would effectively treat the hair as regards entangling/disentangling and smoothness and styling and feel.

Art Unit: 1618

11. Claims 1, 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dubief et al. (US 6, 090,376) in view of Nandagiri et al. (US 5,362,486) in view of .

Claims 1 and 6 are anticipated by Dubief as described above. Dubief discloses composition comprising ionic amphiphilic polymer, tensioning polymer, water and oil as described above. The composition of Dubief is applied to the hair for treatment (abstract). The tensioning polymer of Dubief is a grafted silicone interpenetrating polymer as stated above. Dubief does not teach polyurethane and polyacrylic as tensioning polymer as recited in claim 7. However, Nandagiri discloses composition comprising polyurethane-acrylate for bodifying hair (column 15, lines 13-62). Therefore, taking the two references together, it would have been obvious to use the polyurethane-acrylate tensioning interpenetrating polymer of Nandagiri in the composition of Dubief and expect to have a composition for treating hair as it relates to body, feel, styling and disentangling of the hair.

12. Claims 1, 24 and 43-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dubief et al. (US 6, 090,376) in view of Daiko et al. (US 6,846,812).

Dubief uses composition containing grafted silicone to treat hair or keratinous substances (abstract) as described above. Dubief does not teach using the composition containing grafted silicone to treating/smoothing wrinkled skin or restoring skin tautness. But composition containing grafted silicone is known to have the capability of fading out irregularities if the skin such as wrinkles and fine lines according to Daiko (column 6, lines 3, 4, 14 and 27; column 10, lines 60-62; column 11, lines 29-45; column 12, lines 50-53). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the

Art Unit: 1618

composition of Dubief to the skin and expect the composition to smooth wrinkled skin as taught by Daiko.

### *Double Patenting*

13. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

14. Claims 1, 2, 6-13 and 23-46 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-35; and 1-16 and 19-21 of copending Application Nos. 10982925 and 10/508007 respectively. Although the conflicting claims are not identical, they are not patentably distinct from each other because the examined claims and the co-pending claims are concerned with compositions containing amphiphilic polymer, tensioning polymer, aqueous phase and oil phase for treating keratinous substances and for treating skin conditions.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.



Art Unit: 1618

15. Claims 1, 2, 6-13 and 23-46 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 60-116 and 1-59 of copending Application Nos. 10/591,583 and 10/573,579 respectively. Although the conflicting claims are not identical, they are not patentably distinct from each other because the acrylates of the 10/591,583 and 10/573,579 applications are homologs of the acrylates of the examined claims; with the compositions of pending claims containing tensioning polymers, oil, water and surfactant for treating or softening wrinkled skin.

16. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

17. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

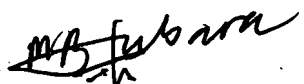
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blessing M. Fubara whose telephone number is (571) 272-0594. The examiner can normally be reached on 7 a.m. to 5:30 p.m. (Monday to Thursday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1618

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Blessing Fubara  
Patent Examiner  
Tech. Center 1600

A handwritten signature in black ink, appearing to read "Blessing Fubara", is written over the printed name.